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IN THE
Supreme Court of the United States

OCTOBER TERM, 1943

No. **650**

JAMES A. CONVEY,

Petitioner,

vs.

THE OMAHA NATIONAL BANK,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
and
BRIEF IN SUPPORT THEREOF**

**RICHARD C. MEISSNER, and
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Of Omaha, Nebraska,
Attorneys for Petitioner.



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*To the Honorable Harlan F. Stone, and the Associate
Justices of the Supreme Court of the United States:*

Your petitioner respectfully shows:

I.

**SUMMARY STATEMENT OF THE MATTER
INVOLVED**

That this matter involves solely the question as to whether the plaintiff and those whom he represents, or any of them, come under the provisions of the Fair Labor Standards Act of 1938.

Jurisdiction Claimed

That jurisdiction is invoked to grant the writ by Section 41(8), 28 U. S. C. A. (Judicial Code) 24, vesting in the United States District Courts original jurisdiction and the right of appeal, and Section 16(b) of the Fair Labor Standards Act, and Rule 38 of the United States Court Rules.

Questions Presented

The question presented is whether the Circuit Court of Appeals for the Eighth District erred in affirming the decision of the District Court sustaining the motion of the respondent for a summary judgment and dismissing the petition of your petitioner.

Reason for Allowance of the Writ

The reasons relied upon for the granting of this writ are:

1. That said Circuit Court of Appeals has decided an important question of Federal Law which has not been, but should be, settled by this Court.
2. That said Circuit Court of Appeals has decided a Federal question in a way probably in conflict with applicable decisions of this Court.
3. That said Circuit Court of Appeals has decided the Federal question in issue based upon the principles enunciated in the case of *Noonan vs. Fruco Construction Co.*, No. 12,637, decided at the same time by said Circuit Court of Appeals for the Eighth Circuit, the principles relating to said *Fruco* case not being applicable to the facts as related in the instant case, and being based upon facts which do not exist in the instant case, said *Fruco* case not being applicable either in fact or in law.

4. That said Circuit Court of Appeals decided said case based upon the decision rendered in *Johnson vs. Dallas Downtown Development Co.*, 5th Circuit, 132 F. (2d) 287, Cert. den., 63 S. Ct. 994, stating that the identical issue was there involved, whereas said case is not applicable to the instant case either in fact or in law.

5. That said Circuit Court of Appeals, in its decision, considered the opinion laid down in *McLeod vs. Threlkeld*, 319 U. S. 491, 87 L. Ed. 1154, which decision does not apply to the instant case either in fact or in law.

Prayer for Writ

Wherefore, petitioner prays that a writ of certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Eighth Circuit commanding said Court to certify and send to this Court a full and complete transcript of the record, and the proceedings of the Circuit Court of Appeals had in this case, numbered and entitled on its docket, No. 12,644, appeal from the District Court of the United States for the District of Nebraska, James A. Convey, Appellant vs. the Omaha National Bank, Appellee, to the end that this case may be reviewed and determined by this Court as provided for by the statutes of the United States, the rules of the United States Court, and the provisions of the Fair Labor Standards Act of 1938, and the judgment herein of said Circuit Court of Appeals be reversed by this Court, and that he have such other relief as to this Court may seem proper.

Respectfully submitted,

JAMES A. CONVEY, *Petitioner*,

By BOLUS J. BOLUS,

His Attorney.